

ROBERT C. HARPER

IBLA 75-409

Decided February 23, 1976

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting in part application I-7944 for a noncompetitive geothermal lease.

Affirmed as modified.

1. Bureau of Land Management -- Geological Survey -- Geothermal Leases: Known Geothermal Resources Area

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

2. Geothermal Leases: Generally -- Geothermal Leases: Known Geothermal Resources Area

Land may properly be declared to be in a known geothermal resources area only upon a finding by the Geological Survey of sufficient competitive interest, where such interest, in the opinion of the Geological Survey, would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated resources are good enough to warrant expenditures for that purpose.

3. Geothermal Leases: Known Geothermal Resources Area -- Secretary of the Interior

It is unnecessary for the Secretary to consult with men experienced in the exploitation of geothermal steam to make

a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

APPEARANCES: Robert C. Harper, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Robert C. Harper has appealed from a decision, dated March 7, 1975, rendered by the Idaho State Office, Bureau of Land Management (BLM), which rejected his noncompetitive geothermal lease application I-7944 in part. The application was filed pursuant to the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1025 (1970), and the regulations thereunder, 43 CFR Part 3200.

The decision below recited in pertinent portion as follows:

The regulation 43 CFR 3200.0-5(k)(3) provides that competitive interest shall exist in the entire area covered by a geothermal application if at least one-half of the lands in it are also covered by another application filed during the same filing period. Part of the lands in your application are involved in a 50% or more overlap of two or more applications. This overlap may or may not be caused by the filing of your application. Your application is rejected in part as to the following lands which were determined to be within a competitive interest KNOWN GEOTHERMAL RESOURCE AREA (KGRA), as of February 28, 1974:

T. 11 N., R. 42 E., B. M., Idaho

Sec. 15, All

Your application is further rejected in part as to the following land for the reason that this land has been conveyed to the State of Idaho without a geothermal steam reservation to the United States:

T. 11 N., R. 42 E., B. M., Idaho

Sec. 16, All

[1] The finding of BLM that sec. 15, T. 11 N., R. 42 E., was, on March 7, 1975, in a Known Geothermal Resources Area was apparently based solely upon a determination by BLM that "part of the lands * * * are involved in a 50% or more overlap of two or more applications."

The BLM finding has a flaw. The authority to make KGRA determinations rests only with the Director, Geological Survey, to whom such authority has been delegated by the Secretary. Hydrothermal Energy & Minerals, Inc., 18 IBLA 393, 82 I.D. 60 (1975); 220 DM 4.1(H). Competitive interest is one element to be considered by the Director, Geological Survey, in making such determinations. KGRA determinations are properly based upon the elements set forth in 30 U.S.C. § 1001(e) of the Act. Hydrothermal Energy & Minerals, Inc., supra at 396-97, 82 I.D. at 61.

[2] Appellant asserts that a determination of a KGRA cannot be made upon a finding of competitive interest only. 30 U.S.C. § 1001(e) defines KGRA as follows:

(e) "known geothermal resources area" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose. (Emphasis supplied.)

The word "or" is ordinarily disjunctive. If it were read here to be conjunctive, the conclusion would be compelled that geology and nearby discoveries and competitive interest and other indicia are all required to engender a belief of geothermal value in order that the land could be declared a KGRA. Congress considered H.R. 16811, 89th Cong., 2d Sess., which contained "and" in lieu of "or" and rejected it ultimately. The interpretation sought by appellant would make a stricter standard for a determination of a KGRA than for the determination of a known geologic structure of a producing oil or gas field, 30 U.S.C. § 226(b) (1970). The latter standard was deemed too loose to be applied to geothermal steam, as manifested by the varied criteria set forth in sec. 4 of the Geothermal Steam Act, 30 U.S.C. § 1003 (1970). We hold that competitive interest alone which would engender a belief in men who are experienced in the subject matter that the prospects for the extraction of geothermal steam or associated geothermal resources warrant expenditures of money for that purpose is a sufficient predicate for the Director, Geological Survey, to determine that land is in a KGRA.

[3] Appellant asserts "that there is no evidence that men experienced in the subject matter have determined that the prospects for extracting geothermal resources from the lands in question are good enough to warrant expenditures of money for that purpose." Appellant misconceives the impact of 30 U.S.C. § 1001(e) (1970). It does not require the Secretary to elicit the opinion of individuals in making the determination. Rather, 30 U.S.C. § 1001(e) (1970) permits the Secretary, or his delegate, to consider any or all of the factors listed and determine whether, in his opinion, they would "engender a belief in men who are experienced in the subject matter that the prospects for extracting geothermal steam * * * are good enough to warrant expenditures of money for that purpose."

The land in the case at bar in section 15, T. 11 N., R. 42 E., was determined to be in the Island Park KGRA, Idaho, by the Geological Survey. 40 F.R. 58160 (December 15, 1975).

Section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1970), provides as follows:

If lands to be leased under this chapter are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. * * *

Thus the controlling statute provides for competitive leasing with respect to land in a KGRA.

A regulation implementing the Act, 43 CFR 3210.4, recites:

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. * * *

This Board has held that section 4 of the Geothermal Steam Act requires competitive bidding for geothermal leases embracing lands which are determined to be within a KGRA prior to the issuance of any noncompetitive lease on the land, even though the KGRA is not ascertained until after the noncompetitive lease application is filed. Baumgartner Companies, 21 IBLA 133 (1975); Robert G. Lynn, 19 IBLA 167, 169-70 (1975); Hydrothermal Energy & Minerals, Inc., supra at 401, 82 I.D. at 64; Geral Beveridge, 14 IBLA 351, 355, 81 I.D. 80, 82 (1974). It necessarily follows that the application as to sec. 15, T. 11 N., R. 42 E., must be, and hereby is, rejected.

Appellant also asserts that his application was improperly rejected as to sec. 16, T. 11 N., R. 42 E., B.M., Idaho, since he asserts, "it may be that the mineral reservation to the United States covering the lands in question embraces geothermal resources."

The records show that section 16 vested in the State of Idaho on March 13, 1902, with no mineral reservation. Since unrestricted title has passed from the United States, appellant's application as to such land was properly rejected. See Richard W. Rowe, 20 IBLA 59, 82 I.D. 174 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed as modified.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

